

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2867 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MIYANA RAJUBEN ISAKBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR MA BUKHARI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/1999

ORAL JUDGEMENT

1. The District Magistrate, Surendranagar passed an order u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act' for short] on 31st March 1999, detaining the petitioner under PASA. The detaining authority took into

consideration eight offences registered against the detinue under Bombay Prohibition Act. The detaining authority also considered the statements of four anonymous witnesses and observed that there is need for exercise of powers u/s 9[2] of the PASA Act in respect of these witnesses. The grounds of detention indicate that the detaining authority was satisfied that the petitioner is a bootlegger as defined under the PASA Act. Her activities were detrimental to public order and was, therefore, required to be detained under the provisions of the PASA Act.

2. The detinue - petitioner has challenged the order of detention on various grounds. The main ground is that there is improper exercise of powers u/s 9[2] of the PASA Act.

3. Ms. Bela Prajapati, appearing for Mr. B.M.Mangukia, learned advocate for the petitioner has restricted her arguments to the above ground only. She submitted that the authority has verified the statements of only two of the witnesses, whereas it has exercised powers u/s 9[2] of the PASA Act in respect of the four witnesses. The order of detention, therefore, would stand vitiated. In support of her argument, she has placed reliance on a decision of this Court rendered in L.P.A. No. 1191/99 in Special Civil Application No.221/99 in the case of Shanker Vishnubhai v/s Commissioner of Police and others, decided on 8th October 1999 [Coram : Acting C.J. Mr. C.K.Thakkar and Justice Mr. K.M.Mehta].

4. Mr. Bukhari, learned AGP has opposed this petition. He concedes to the factual aspects that the statements of two of the anonymous witnesses are not verified by the detaining authority. He has however submitted that the detaining authority has taken into consideration all relevant aspects and then, has exercised powers u/s 9[2] of the PASA Act.

5. Having regard to the rival side contentions, the question that requires to be considered by this Court is whether the authority could have exercised powers u/s 9[2] of the PASA Act of claiming privilege of not disclosing the identity of the witnesses on account of fear expressed by them qua the petitioner - detinue, can be said to have been properly exercised in absence of verification of statements of two of such anonymous witnesses.

6. When powers u/s 9[2] of the PASA Act are

exercised, they have a direct bearing on the right of the detinue of making a representation. The powers u/s 9[2] are to be exercised in public interest. Therefore, the detaining authority, while exercising this powers, has to strike a balance between the public interest on one hand and the interest of the detinue on the other. For this purpose, the authority has to record a subjective satisfaction that the fear expressed by the witnesses qua the detinue in respect of their person and property is genuine and that if the identity of these witnesses is disclosed, their person and property would be in danger. Whether fear expressed by a witness is genuine or not, can be verified in number of ways. But the main requirement is that the statements of the witnesses are required to be verified by the detaining authority, then only the subjective fear shown by the witnesses can be assessed subjectively by the detaining authority and therefore, verification of their statements is necessary. In this case of Shanker Vishnubhai [supra], the Division Bench of this Court has observed as under :-

"In our opinion, in the instant case, since the third statement was not verified, the subjective satisfaction was vitiated and the order deserves to be quashed and set aside."

7. In this view of the matter, the order of detention would stand vitiated as the subjective satisfaction for the exercise of powers u/s 9[2] of PASA ACT has also stood vitiated. Improper exercise of powers u/s 9[2] of PASA Act has resulted in infringementt of right of the detinue of making a representation. The petition therefore deserves to be allowed.

8. The petition is therefore allowed. The impugned order of detention dated 31st March 1999 passed by the District Magistrate, Surendranagar in respect of the detinue is quashed. The detinue - Miyana Rajuben Isakbhai, is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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